

1970

mit briefs. P's Memo on Questions of Mootness and Damages, FILED in Court.

May 8 Deft's Motion for Extension of Briefing Schedule, FILED with c/s.

12. GARRITY, J. On Deft's Motion filed 5/8/70, "ALLOWED". Copies to counsel and Judges showing allowance.

21 Deft's Supplemental Brief, FILED with c/s.

22 Stenographic Proceedings, FILED.

25 Reply Brief of Plaintiff on Questions of Mootness and Damages, FILED with c/s.

July 1 ALDRICH, JULIAN & GARRITY, JJ. — Determination of the Question of Mootness, ENTERED. (cc/Cl.)

1 ALDRICH, JULIAN & GARRITY, JJ. — Reinstated Judgment and Injunction, ENTERED. (cc/Cl.)

10 Original pleadings sent by certified mail (#170-168) to the Supreme Court.

31 Deft's notice of appeal filed. Copy to Atty. Winsor.

Aug. 3 Deft's notice of appeal sent to the Supreme Court by certified mail. (170169)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COMPLAINT

[TITLE OMITTED IN PRINTING]

1. This is an action (a) to enjoin the Defendants in their official capacities from enforcing against the Plaintiff the oath provisions of Massachusetts General Laws c. 264, s. 14, as in violation of the Constitution of the United States, (b) to enjoin the Defendants from any action which

bars the Plaintiff from entering upon and discharging her duties at Boston State Hospital, and (c) for damages.

2. Jurisdiction is based on Title 28 U.S.C., sections 1331 and 1343 (3). The matter in controversy arises under the provisions of Title 28 U.S.C. sections 2281 and 2284, as well as of Title 42, Section 1983, and exceeds the sum or value of ten thousand dollars, exclusive of interest and costs.

3. The Plaintiff is a research sociologist by training and resides in Boston, Massachusetts. The Defendant Dr. Jonathan O. Cole (hereafter called Cole), is a resident of Boston, Massachusetts and Superintendent of Boston State Hospital, Boston. The Defendant Dr. Milton Greenblatt (hereafter called Greenblatt), is a resident of Newton, Massachusetts, and is Commissioner of Mental Health for the Commonwealth of Massachusetts, having under his control Boston State Hospital.

4. Pursuant to an employment arrangement with Boston State Hospital, the Plaintiff, on or about September 30, 1968, reported to Boston State Hospital to commence her employment and thereafter began performing the duties of her employment.

5. On or about November 15, 1968, during her employment processing, the Plaintiff was advised by the personnel department of Boston State Hospital that her employment could not be continued until and unless she signed an oath as required by Massachusetts General Laws c. 264, s. 14 as follows:

Every person entering the employ of the Commonwealth or any political subdivision thereof, before entering upon the discharge of his duties, shall take and subscribe to, under the pains and penalties of perjury, the following oath or affirmation:

"I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of

America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method."

Such oath or affirmation shall be filed by the subscriber, if he shall be employed by the state, with the secretary of the Commonwealth, if an employee of a county, with the county commissioners, and if an employee of a city or town, with the city clerk or the town clerk, as the case may be...

Added St. 1949, c. 619.

Under the provisions of Massachusetts General Laws c. 264, s. 15, violation of s. 14 is also punishable by a fine of not more than ten thousand dollars, or imprisonment for not more than one year, or both.

6. The Plaintiff advised the personnel department of Boston State Hospital that she would not sign the oath required by M.G.L. c. 264, s. 14, because she believed that it violated the Constitution of the United States. On November 25, 1968, the Defendant Cole advised the Plaintiff that her employment by Boston State Hospital was terminated, effective on that date, solely because of her refusal to sign said oath. Plaintiff had not been and has not been paid any salary for her work.

7. The requirements of c. 264, s. 14, and the demand by the defendants, under compulsion of law, that the Plaintiff execute said oath as a condition to her continuing to discharge her duties as an employee of Boston State Hospital, constitute a violation of the rights guaranteed to the Plaintiff by the Fourteenth Amendment to the U.S. Constitution, and by the First Amendment as applied to the States by the Fourteenth.

8. Requiring the Plaintiff to take the oath set forth above on penalty of losing her employment denies her

freedom of association and speech, and the failure to take such a vague and uncertain oath may subject Plaintiff to criminal penalties which she cannot anticipate and against which she cannot guard; further, the oath unconstitutionally coerces the Plaintiff in the exercise of her political beliefs and activities, without any demonstration of the relevance of the oath to the employment involved.

9. Plaintiff is ready, willing and able to recommence her work at Boston State Hospital, but since Plaintiff declines to take and subscribe to said oath, she is thereby prohibited from entering upon the discharge of her duties and has been denied the continuation of her employment previously entered into with Boston State Hospital. As a consequence, she will be denied any further employment with the Commonwealth of Massachusetts or any of its governmental subdivisions, all of which constitutes serious and irreparable harm and injury to her.

10. A real and substantial question exists between Plaintiff and the defendants as to the constitutionality of the required oath; and Plaintiff has no plain and adequate remedy at law.

WHEREFORE, the Plaintiff prays that

1. A court constituted as required by Title 28 U.S.C. Sections 2281 and 2284, be convened.

2. After hearing, this Court find the Defendants' action in terminating the Plaintiff's employment at Boston State Hospital to be null and void.

3. After hearing, this Court permanently enjoin the Defendants, Cole and Greenblatt, their agents, servants and attorneys, from prohibiting, interfering with or barring the Plaintiff in any way from recommencing and thereafter discharging her duties at Boston State Hospital, insofar as such prohibition is based upon the refusal of the Plaintiff to take the oath required by M.G.L. c. 264, s. 14.

4. Damages be awarded to the Plaintiff for her uncompensated employment at Boston State Hospital.

5. Plaintiff have such other and further relief as this Court deems meet and just.

By her attorneys,
 ERNEST WINSOR, Esq.
 STEPHEN H. OLESKEY, Esq.
 HALE AND DORR.
 28 State Street
 Boston, Massachusetts
 742-9100

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 69-302-G

LUCRETIA PETEROS RICHARDSON,
 PLAINTIFF,

v.

DR. JONATHAN O. COLE, Superintendent,
 Boston State Hospital, and
 DR. MILTON GREENBLATT, Commissioner,
 Department of Mental Health,
 Commonwealth of Massachusetts,

DEFENDANTS.

ORDER

March 25, 1969

GARRITY, J. In connection with plaintiff's application for a three-judge court under 28 U.S.C. § 2281, plaintiff is ordered to file on or before March 27, 1969, a memorandum of law as to the substantiality of the federal constitutional question raised in the complaint.

(s) W. ARTHUR GARRITY, JR.

United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

DEFENDANTS' ANSWER

First Defense.

The complaint fails to state a case against the defendants upon which relief can be granted.

Second Defense.

The defendants are not called upon to answer paragraphs 1 and 2 of the complaint for the reason that the matters contained therein constitute conclusions of law.

Defendants allege that they are without knowledge sufficient to form a belief as to the truth of the allegation in paragraph 3 of the complaint that plaintiff is a research sociologist by training. Defendants admit each and every other allegation in paragraph 3 of the complaint.

Defendants admit all of the allegations in paragraphs 4 and 5 of the complaint.

Defendants deny the allegation in paragraph 6 of the complaint that plaintiff had not been and has not been paid any salary for her work and allege that a check was issued to plaintiff in the sum of \$972.52 as compensation for forty-one days of employment from September 29, 1968 to November 25, 1968. Defendants admit each and every other allegation in paragraph 6 of the complaint.

The defendants are not called upon to answer paragraphs 7 and 8 of the complaint for the reason that the matters contained therein constitute conclusions of law.

Defendants admit the allegation in paragraph 9 of the complaint that plaintiff is precluded from continuation of her employment at Boston State Hospital due to her refusal to take the required oath. Defendants allege they are with-

out knowledge sufficient to form a belief as to the truth of the remainder of the allegations in said paragraph 9.

The defendants are not called upon to answer paragraph 10 of the complaint for the reason that the matters contained therein constitute conclusions of law.

DR. JONATHAN O. COLE

DR. MILTON GREENBLATT

By their attorney,

ROBERT H. QUINN, *Attorney General*

By ELIZABETH G. VERVILLE

Assistant Attorney General

MARK L. COHEN

Deputy Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

STIPULATION OF FACTS

Now come the parties in the above-entitled action and for the purpose of this case only stipulate the following facts:

1. Plaintiff, Lucretia Peteros Richardson (hereinafter called Plaintiff) is over 21 years of age, a U.S. citizen, and a resident of Massachusetts. Plaintiff is a Sociologist by training and holds a M.S. degree in Sociology.

2. Defendant, Dr. Jonathan O. Cole (hereinafter called Cole) was duly appointed Superintendent of Boston State Hospital, Boston, Massachusetts, pursuant to Massachusetts General Law C. 123, S. 28. Defendant, Dr. Milton Greenblatt (hereinafter called Greenblatt) is Commissioner of Mental Health of the Commonwealth of Massachusetts and pursuant to Massachusetts General Laws, c. 19, s. 1, has

exclusive control and supervision over the Department of Mental Health.

3. Boston State Hospital is a state institution for the mentally ill, under the control of the Department of Mental Health (M.G.L. s. 123, s. 25), and is located at 591 Morton Street, Dorchester, Massachusetts.

4. The Plaintiff's employment by Boston State Hospital commenced on September 30, 1968 and continued thereafter until November 25, 1968. Plaintiff's employment was commenced pursuant to an oral agreement with Dr. Alvin Becker, Director of Psychiatry, Boston State Hospital. Plaintiff's employment was authorized by Dr. Cole. Plaintiff's salary was by agreement with Boston State Hospital to be \$118.60 per week. Plaintiff was assigned a position as an "Occupational Therapist" to undertake a research project for the hospital. During belated employment processing on November 15, 1968, Miss Brady, Principal Clerk of the Personnel Department at Boston State Hospital, advised Plaintiff that she was required by statute to subscribe to the provisions of the oath required by Massachusetts General Laws, c. 264, s. 14, as follows:

"I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method."

5. M.G.L. c. 264, s. 14 provides that the oath is expressly taken subject to the pains and penalties of perjury. Under provisions of M.G.L. c. 264, s. 15, violation of M.G.L. c. 264, s. 14 is punishable by a fine of, not more than \$10,000 or imprisonment for not more than one year, or both.

6. Plaintiff was advised, pursuant to the statute, that her employment would not be continued unless she affirmed

the oath. Plaintiff informed the personnel department that she would not subscribe to the oath because she believed that it was in violation of the Constitution of the United States.

7. On or about November 25, 1968, Cole, as Superintendent of Boston State Hospital, personally informed Plaintiff that she could not continue as an employee of Boston State Hospital until and unless she subscribed to the oath required by M.G.L. c. 264, s. 14. Plaintiff reiterated that she would not affirm the oath. Cole then informed Plaintiff orally that she would be paid only until November 25, 1968.

8. Plaintiff volunteered to work full time at Boston State Hospital from November 25, 1968, to December 20, 1968, without pay, in order to continue her research project. Plaintiff was subsequently paid for her services from September 30, 1968 to November 25, 1968. From January 27, 1969, to the present date Plaintiff has worked at approximately one-third full time at Boston State Hospital on her research project.

9. Plaintiff is ready, willing and able to recommence her employment at Boston State Hospital but her refusal to take the oath required by M.G.L. c. 264, s. 14, represents an absolute bar to such employment. The project for which Plaintiff was hired is still on-going at Boston State Hospital.

By her attorneys,

ERNEST WINSOR

STEPHEN H. OLESKEY

HALE AND DORR

28 State Street

Boston, Massachusetts

Defendants, JONATHAN O. COLE and MILTON GREENBLATT,
by their attorney,

ELIZABETH G. VERVILLE

Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 69-302-G

LUCRETIA PETEROS RICHARDSON, *Plaintiff*,

v.

DR. JONATHAN O. COLE, Superintendent, Boston State
Hospital, and DR. MILTON GREENBLATT, Commis-
sioner, Department of Mental Health, Common-
wealth of Massachusetts, *Defendants*.

Before ALDRICH, *Circuit Judge*,
JULIAN and GARRITY, *District Judges*.

OPINION

June 26, 1969

ALDRICH, *Circuit Judge*. The plaintiff, after six weeks of employment by the Commonwealth of Massachusetts as a research sociologist at the Boston State Hospital, was informed that she would have to take the oath required of all public employees by Mass. G.L. c. 264 § 14. Upon her refusal, on the assertion that the oath was unconstitutional, she was paid for her services to date and told that no further compensation could be made. She then brought the present suit under 28 U.S.C. § 2281, requesting the appointment of a three-judge district court and a declaration of the statute's unconstitutionality. Named respondents are the Superintendent of the hospital and the Commissioner of the Department of Mental Health, but the Commonwealth was properly served and defends through the Attorney General, and for convenience we will refer to the Commonwealth as the respondent. No question of standing is raised.

The statutorily required oath is as follows.

"I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method."

A "violation" of section 14, which presumably means a failure to "live up" to the oath, since its phraseology is in the future tense, is a felony. Mass. G.L. c. 264 § 15.

The oath can be conveniently divided into two parts, the first ending with the word "Massachusetts." Plaintiff makes an esoteric analysis of the phrase "uphold and defend" from which she argues that even this part is improper. We consider this argument foreclosed by *Knight v. Board of Regents*, S.D.N.Y., 1967, 269 F. Supp. 339, *aff'd* 390 U.S. 36. While the obligation in *Knight* was to "support" the constitution, traditionally the words "support," "uphold," and "defend" may be regarded as equivalents. See, Report of the Attorney General (of Mass.) (1967) pp. 206-07.

Plaintiff takes an equally esoteric word-by-word approach to the second part which, if we were to follow it, would make almost any sentence in the English language ambiguous. A criminal statute is to be strictly interpreted, but this does not mean that common sense is to be jettisoned. In at least one aspect, however, we must agree with plaintiff's position. We find the phrase "oppose the overthrow" fatally vague and unspecific.

The word "oppose" has a number of common meanings, running from the negative, "not favor," or "refrain from," to the affirmative, viz., to take active steps to restrain the conduct of others. Had the statute plainly said the former, we might find it difficult to support the plaintiff's conten-

tion that the First Amendment forbade the state from imposing such restrictions upon its employees. This would involve the question whether what, for the ordinary citizen, may be free speech if the approval of violence is sufficiently benign, cf. *Brandenberg v. Ohio*, U.S. (6/10/69) 37 L.W. 4525, may be forbidden to public employees. Cf. *Garner v. Board of Public Works of Los Angeles*, 1951, 341 U.S. 116. We might be particularly led to such a restricted meaning of "oppose" by the fact that the statute reads "overthrow" as distinguished from "attempt to overthrow." Obviously if one is speaking in terms of making active opposition to someone else's conduct, it is too late to oppose after there has been an overthrow—the opposition must be to the attempt. On the other hand, if one is speaking of one's personal standards one can favor an overthrow, or not favor it.

However, there is another possible, and in the opinion of at least one member of this court, even more plausible interpretation of the oath. This meaning has, in fact, been embraced by the Commonwealth. In its brief it says,

"[I]n the event that a clear and present danger arose of the actual overthrow of the government, . . . the public employee [would] be required to use reasonable means at his disposal to attempt to thwart that effort. What he might do in such circumstances could range from the use of physical force to speaking out against the downfall of the government. The kind of response required would be commensurate with the circumstances and with the employee's ability, his training, and the means available to him at the time."

In oral argument the Deputy Assistant Attorney General amplified the Commonwealth's position. There were, he asserted, three standards of obligation to take active steps

to "oppose" the overthrow of the government by force or violence. The ordinary citizen who has taken no oath has an obligation to act *in extremis*; a person who has taken the first part of the present oath would have a somewhat larger obligation, and one who has taken the second part has one still larger.

We need not explore these undefined boundaries. The very fact that such varied standards, as well as the alternative one of purely negative behavior earlier adverted to, can be suggested is enough to condemn the language as hopelessly vague. It is, of course, well settled that employment cannot be conditioned upon an unintelligible oath. Cf. *Connally v. General Constr. Co.*, 1926, 269 U.S. 385, 391; *Cramp v. Board of Instruction of Orange County*, 1961, 368 U.S. 278, 287.

Plaintiff is entitled to a declaration that the statute is unconstitutional. She is also entitled to the injunction requested, forbidding the defendants from prohibiting her from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by Mass. G.L. c. 264(14). We cannot grant her request for back pay.

BAILEY ALDRICH
ANTHONY JULIAN
W. ARTHUR GARRITY, JR.

B.D.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 69-302-G

LUCRETIA PETEROS RICHARDSON, *Plaintiff,*

v.

DR. JONATHAN O. COLE, Superintendent, Boston State Hospital, and DR. MILTON GREENBLATT, Commissioner, Department of Mental Health, Commonwealth of Massachusetts, *Defendants.*

Before ALDRICH, *Circuit Judge,*
JULIAN and GARRITY, *District Judges.*

JUDGMENT AND INJUNCTION

June 26, 1969

This cause came on to be heard upon the complaint of Lucretia Peteros Richardson. The Court, upon consideration of the complaint, the answer of the defendants, the stipulation of facts, the briefs and arguments of counsel for the plaintiffs and the defendants, and for the reasons stated in its opinion filed herewith,

ORDERS, ADJUDGES and DECREES:

a) that section 14 of chapter 264 of the General Laws of Massachusetts violates the First Amendment of the Constitution of the United States and is therefore invalid; and

b) that the defendants be, and they are hereby, permanently enjoined from prohibiting the plaintiff from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by said section 14 of chapter 264 of the General Laws of Massachusetts.

BAILEY ALDRICH
ANTHONY JULIAN
W. ARTHUR GARRITY, JR.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

SUPPLEMENTARY STIPULATION

With the reservation that the parties do not waive their right to object to the admissibility of the facts contained herein on grounds of materiality, relevancy, or any further grounds, the following facts are stipulated in accordance with the order of this Court dated March 24, 1970, as amended by order of April 9, 1970:

1. On or about February 2, 1969 the "Occupational Therapist" job slot which the plaintiff had filled until November 25, 1968 was filled by another person.

2. On and after June 27, 1969, following this Court's decision on June 26, 1969, the plaintiff attempted unsuccessfully to secure her former position at Boston State Hospital.

3. On August 4, 1969 the defendant Cole offered the plaintiff a consulting position to perform the research services for which she was originally hired at the Boston State Hospital. The plaintiff was to be paid fifteen dollars for each consulting session and was to work five sessions per week. The plaintiff was not required to sign the Massachusetts state employee loyalty oath as a condition of her employment, in accordance with the decision of this Court. The plaintiff accepted the defendant Cole's offer.

4. The first bill submitted by the plaintiff on October 3, 1969 for services she rendered on a consulting basis was returned to her for the reason that no Boston address was submitted with the bill, and the description of

the work contained in the bill was not considered adequate by the defendant Cole.

5. The plaintiff mailed a second bill on October 14, 1969 which in her opinion was not defective in the manner described in paragraph 4 of this stipulation.

6. The defendant Cole has not received a copy of any bill for services rendered by the plaintiff other than the bill submitted on October 3, 1969.

7. The defendant's offer to compensate the plaintiff on a consulting basis pursuant to the terms set forth in paragraph 3 of this stipulation has not been revoked.

8. On or about September 1, 1969 the plaintiff ceased to be a resident of the Commonwealth of Massachusetts but has since then and still now holds herself out to be ready, willing and able to complete the research project for which she was hired, subject only to her refusal to take said loyalty oath and to her not being required to be present in the Commonwealth on an average of more than two days per week until such project is completed. Louise Wylan, the plaintiff's supervisor, has stated that the work of the plaintiff can be performed away from the Boston State Hospital.

9. If the plaintiff had continued to fill the "Occupational Therapist" job slot subsequent to the termination of her employment in this position on November 25, 1968 for one full year, she would have been paid \$5,194.68 above and beyond the payment of \$972.52 she has already received for the work she performed between September 30, 1968 and November 25, 1968, and would have been paid an additional \$780.00 as a result of a state employee pay raise effective December 29, 1968.

Defendants,

By their Attorney, The

Attorney General of Massachusetts

By _____

MARK L. COHEN
Assistant Attorney General
State House
Boston, Massachusetts
727-2265

Plaintiff,

By her Attorneys,

By _____

ERNEST WINSOR, ESQ.
STEPHEN H. OLESKEY, ESQ.
HALE AND DORR
28 State Street
Boston, Massachusetts
742-9100

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

AFFIDAVIT OF GERALD A. BERLIN

Suffolk, SS.

Boston, May 14, 1970

I, GERALD A. BERLIN, a practising attorney in the City of Boston, being duly sworn, depose and say as follows:

1. As of the date of this writing I am and have been for the last three years the Chairman of the Civil Liberties Union of Massachusetts, an affiliate of the American Civil Liberties Union, a voluntary membership organization dedicated to the principles embodied in the Bill of Rights of the United States Constitution.

2. In such capacity I have on at least four occasions, briefly summarized below, received inquiries as to the validity of, and been made aware of the continuing discontent and objections of many state employees with and to,

the state employee loyalty oath set forth in G.L. c. 264 § 14. Those occasions may be briefly summarized as follows:

a. Shortly after the decision by this Court in this case on June 26, 1969 (declaring said oath to be unconstitutional) I received a communication from a public employee in a teaching position in Springfield. This person told me that he had been told by his employer that his pay was to be withheld and he would be discharged from his position if he continued to refuse to take the said oath. Thereafter I personally contacted an Assistant Attorney General in the office of Attorney General Robert H. Quinn and persuaded him that the position taken by the employer of the Springfield schoolteacher was in clear violation of this Court's decision insofar as no stay has been requested or obtained by the Attorney General. Thereafter I was informed that the Attorney General's office had advised the employer of the said teacher to cease demanding that this oath be taken, and that the pay of this employee was no longer being withheld or under the threat thereof.

b. On another and later occasion in 1969 or 1970, I received an inquiry with respect to this oath from an employee (not the plaintiff in this case or anyone associated with her) of the Boston State Hospital. I advised said employee to await the outcome of this law suit.

c. At another time during this same period I received another inquiry from another state employee again inquiring as to the validity of this oath. Again I advised said employee to await the outcome of this law suit. My memory as to the specific facts of this and the preceding incident are unclear except that the state employees who called me were clearly troubled by the oath requirement and their legal duties with respect to it.

d. On or about April 16, 1970 I received a letter from three employees (including the director) of the Office of Manpower, Development and Training in the Department of Public Health, again inquiring as to the validity of the state employee oath. Attached hereto is a copy of that letter, dated April 15, 1970, together with a copy of an enclosure to that letter, namely a letter dated April 6, 1970 from Walter H. Mayo, III, Chief of the Administrative Division of the Department of the Attorney General in the Commonwealth of Massachusetts. It is clear from reading this letter and its' enclosure that if the instant case is held to be moot, other plaintiffs are ready to challenge said oath.

3. From the foregoing inquiries and from other information coming less directly to my attention it is clear to me that the issue of the validity of the Massachusetts state employee loyalty oath is a matter of continuing controversy within the Commonwealth of Massachusetts and will remain so until the controversy is ended by a final decision from a court having jurisdiction, appellate or otherwise.

(s) GERALD A. BERLIN

Then personally appeared the above-named GERALD A. BERLIN, and on the above date made oath that the foregoing facts were true, and, to the extent they were stated on information, that he believed them to be true.

Before me:

(s) HOWARD S. WHITESIDE
Notary Public

My commission expires:

Jan. 5, 1975

[Letterhead—THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC HEALTH
OFFICE OF MANPOWER, DEVELOPMENT, AND TRAINING]

April 15, 1970

[727-2681]

Mr. Jerald Berlin, Chairman
American Civil Liberties Union
73 Tremont Street
Boston, Massachusetts

Dear Mr. Berlin:

We are attaching a copy of the oath which Massachusetts Department of Public Health employees are asked to sign upon entering state service, a letter to the Commissioner stating the Department of the Attorney General's position concerning our refusal to sign the oath.

Our objections to signing this oath are as follows:

1. This oath requires not only that one defend the Constitution of the United States of America and the Commonwealth of Massachusetts, but also their respective governments. We believe that it is impossible to ascribe to both of these statements simultaneously as they may be, and often are, contradictory. When the government of either the Commonwealth or the nation violates the Constitution we believe the citizen owes his loyalty to the Constitution, as opposed to the government. We have no objections to signing an oath of support of the Constitution of the United States.
2. We do not feel we can oppose the overthrow of the government by "force, violence, or by any illegal . . . method," as this prohibits taking *any* action, including civil disobedience, when the government acts in opposition to the Constitution.

We have already decided not to sign the oath, and would

like to know what our legal status is. Must we at this point take some action? Can we obtain a restraining order preventing the department from dismissing us as long as the case is pending?

As the administration has requested that we notify them within "a few days" of what we intend to do, we would like an answer from you as soon as possible.

Very sincerely yours,

(s) JESSE McDADE

JESSE McDADE, *Director*

(s) JANET BOUTON

JANET BOUTON, *Survey Analyst*

(s) BARBARA RIDDLE

BARBARA RIDDLE, *Supervisor of Training*

JM/lal

Enclosure

NAME

(Print or type)

Family

Given

Middle

Oath Upon Entering the Employ of

DEPARTMENT OF PUBLIC HEALTH

(See General Laws Chapter 264, sections 14 and 15 as amended.)

I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the government of the United States of America or of this Commonwealth by force, violence or by any illegal or unconstitutional method.

SUBSCRIBED BY ME UNDER THE PENALTIES OF PERJURY

this day of 19.....

[Letterhead — THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE ATTORNEY GENERAL]

April 6, 1970

Honorable Alfred L. Frechette, M.D.
Commissioner of Public Health
600 Washington Street
Boston, Massachusetts 02111

Dear Doctor Frechette;

This is in reply to your letter of February 6, 1970, inquiring whether the oath required by G.L. c. 264, § 14 is mandatory. I have delayed answering your letter in view of the pendency of our appeal to the Supreme Court of the United States of a Federal District Court decision which declared the statute unconstitutional.

On March 16, 1970, the Supreme Court vacated the judgment of the District Court and remanded the case to determine whether it was moot. Therefore, the oath is now required unless and until the District Court enters a further judgment declaring it invalid.

Yours very truly,

(s) WALTER H. MAYO III :

WALTER H. MAYO III

Assistant Attorney General

Chief, Administrative Division

WHM:AMJ

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 69-302-G

LUCRETIA PETEROS RICHARDSON, *Plaintiff*,

v.

DR. JONATHAN O. COLE, Superintendent, Boston State
Hospital, and DR. MILTON GREENBLATT, Commis-
sioner, Department of Mental Health, Common-
wealth of Massachusetts, *Defendants*.

Before ALDRICH, *Circuit Judge*,
JULIAN and GARRITY, *District Judges*.

DETERMINATION ON THE QUESTION
OF MOOTNESS

July 1, 1970

PER CURIAM. Following the order of the Supreme Court of the United States vacating the judgment herein and remanding the case for a determination whether the causes on appeal (Nos. 679 and 774, October Term 1969) have become moot, the court held a hearing and received evidence, including testimony of the plaintiff, and a supplementary stipulation of undisputed facts relating to questions of mootness. At the hearing plaintiff filed a memorandum of law and the attorneys for plaintiff and defendants made oral arguments. Thereafter defendants filed a supplemental brief and plaintiff a reply brief. On the basis of the supplementary stipulation and evidence received, and upon consideration of the arguments and memoranda of law, the court makes the following findings:

Constitutionality of Mass. G.L. c. 264, §14

1. Plaintiff has retracted her suggestion of mootness made in the Supreme Court, explaining that her motion there to dismiss appeal No. 679 on the ground of mootness

was predicated on a misunderstanding that the filling of the "job slot" of an occupational therapist which she had been occupying precluded her further employment.¹ It is now clear, however, both from Dr. Cole's affidavit filed in the Supreme Court and from the supplementary stipulation filed in this court on April 24, 1970, that the project for which she was originally hired is still on-going and defendants are ready and willing to employ her on a consulting basis.

2. Plaintiff moved from Massachusetts to New York City in September 1969. For approximately one month before leaving she was hired by the defendants as a consultant to be paid at the rate of \$15 per consulting session.² This is the specific employment opportunity which is still open to her provided she takes the oath required of all state employees by Mass. G.L. c. 264, § 14. Plaintiff is willing to come to Boston on an average of two days per week for the purpose of completing the research project which she started.

Therefore, in our opinion, plaintiff's claim for an injunction forbidding the defendants from barring her re-employment insofar as such prohibition is based upon her refusal to take the oath required by Mass. G.L. c. 264, § 14, is not moot.

Claim for Damages

3. The facts regarding plaintiff's claim for back pay have been clarified by the supplementary stipulation. Contrary to the allegation in paragraph 6 of the complaint,

¹ Defendants have continued to maintain that the case is not moot.

² Plaintiff was not required to sign the state employee loyalty oath as a condition of this employment, evidently because of defendant Cole's desire to observe this court's opinion dated June 26, 1969. But there has been no waiver of the requirement generally and the original stipulation of the parties, in paragraph 9 of the stipulation of facts filed May 16, 1969, that plaintiff's refusal to take the oath is an absolute bar to her further employment has not been modified.

plaintiff has been compensated in full for work performed up to November 25, 1968, when she was discharged for refusal to subscribe to the loyalty oath. Upon being discharged plaintiff volunteered to work on the project without compensation and did so full time for a period of approximately one month after November 25, 1968 and continued to work on a volunteer basis without pay at about one-third full time from January 27, 1969 until the decision of the district court entered, June 26, 1969. For approximately one month following June 26, 1969 plaintiff attempted unsuccessfully to secure her former position at the Boston State Hospital. On August 4, 1969 she resumed work on the project on a consulting basis at the rate of \$15 per consulting session and was to work five sessions per week. Four weeks later she moved to New York, where her husband is employed.

4. In early October she submitted a bill to defendants for \$300 for services she had rendered as a consultant. Due to the form of the invoice, payment was delayed. Payment has not yet been made but only because the parties desired to preserve the status quo for purposes of this case. Defendants do not resist payment. Defense counsel stated at the hearing and in the last sentence of the supplemental brief for the defendants filed May 18, 1970 that if the bill is resubmitted by plaintiff or her counsel, it will be promptly processed for payment.

5. At the hearing and in a memorandum filed April 27, 1970 and a reply brief filed May 25, 1970 plaintiff claims damages of approximately \$5000 for breach of contract of employment, which she testified she expected would last for approximately one year when she commenced working on September 30, 1968. The court will not entertain this claim for two reasons: (a) The complaint seeks damages only for "her uncompensated employment at Boston State Hospital" and plaintiff never moved to amend the

complaint; (b) Plaintiff's testimony at the hearing demonstrated that there is no substance to her belated claim for breach of contract and the court would not allow a motion to amend the complaint if presented. Plaintiff testified that the program which commenced on September 30, 1968 was of indefinite duration and a kind of pilot study, the expansion of which she and defendants hoped would be financed by a grant from a private foundation.

Therefore, in our opinion, plaintiff's claim for damages has become moot.

(s) BAILEY ALDRICH
Circuit Judge

(s) ANTHONY JULIAN
District Judge

(s) W. ARTHUR GARRITY, JR.
District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 69-302-G

LUCRETIA PETEROS RICHARDSON, *Plaintiff,*

v.

DR. JONATHAN O. COLE, Superintendent, Boston State Hospital, and DR. MILTON GREENBLATT, Commissioner, Department of Mental Health, Commonwealth of Massachusetts, *Defendants.*

Before ALDRICH, *Circuit Judge,*
JULIAN and GARRITY, *District Judges.*

REINSTATED JUDGMENT AND INJUNCTION

July 1, 1970

This cause came on to be heard for a determination whether the case is moot, judgment entered herein on

June 26, 1969 having been vacated by order of the Supreme Court of the United States and the case having been remanded for a determination of mootness, and the court having held an evidentiary hearing and considered the briefs and arguments of counsel and having determined in its opinion filed herewith that the case is not moot,

ORDERS, ADJUDGES and DECREES:

(a) that section 14 of chapter 264 of the General Laws of Massachusetts violates the First Amendment of the Constitution of the United States and is therefore invalid; and

(b) that the defendants be, and they are hereby permanently enjoined from prohibiting the plaintiff from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by said section 14 of chapter 264 of the General Laws of Massachusetts.

(s) BAILEY ALDRICH
Circuit Judge

(s) ANTHONY JULIAN
District Judge

(s) W. ARTHUR GARRITY, JR.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[TITLE OMITTED IN PRINTING]

CLAIM OF APPEAL

Now come the Defendants in the above-entitled action and pursuant to the provisions of 28 U.S.C. §1251, appeal to the Supreme Court of the United States from the judgment entered by the Court on July 1, 1970.

By their attorneys,

WALTER H. MAYO III

Assistant Attorney General

Chief,

Administrative Division

MARK L. COHEN

Assistant Attorney General

July 31, 1970
